

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ORDER OF REFERENCE

WARREN SMITH

Petitioner

V.

Check if previously referred:

CA/CR No. 3: 04-30205-MAP

FREDERICK MACDONALD

Respondent

Criminal Category _____

In accordance with 28 U.S.C. §636 and the Rules for United States Magistrates in the United States District Court for the District of Massachusetts, the above-entitled case is referred to Magistrate Judge NEIMAN for the following proceedings:

(A) XX Referred for full pretrial case management, including all dispositive motions.

(B) Referred for full pretrial case management, not including dispositive motions:

(C) Referred for discovery purposes only.

(D) Referred for Report and Recommendation on:

- Motion(s) for injunctive relief
- Motion(s) for judgment on the pleadings
- Motion(s) for summary judgment
- Motion(s) to permit maintenance of a class action
- Motion(s) to suppress evidence
- Motion(s) to dismiss
- Post Conviction Proceedings¹

See Documents Numbered: 1

(E) Case referred for events only. See Doc. No(s). _____

(F) Case referred for settlement.

(G) Service as a special master for hearing, determination and report, subject to the terms of the special order filed herewith:

- In accordance with Rule 53, F.R.Civ.P.
- In accordance with 42 U.S.C. 2000e-5(f)(5)

(H) Special Instructions: Motion for appointment of counsel and scheduling conference

October 14, 2004

Date

By: /s/ Maurice G. Lindsay
Deputy Clerk

(Order of Ref to MJ.wpd - 05/2003)

¹ See reverse side of order for instructions

INSTRUCTIONS FOR POST-CONVICTION PROCEEDINGS

In accordance with all rules governing §2254 and §2255 cases the magistrate judge to whom this post-conviction proceeding is referred shall:

____ Make a recommendation as to summary dismissal under Rule 4 of the Rules for §2254 and §2255 cases

____ Appoint counsel if the interests of justice so require

____ Order issuance of appropriate process, if necessary

____ Hold a hearing to determine whether or not an evidentiary hearing must be held and make a recommendation to the district judge

____ If the magistrate judge expects to recommend that an evidentiary hearing be held, the magistrate judge shall hold a pretrial conference for the purpose of narrowing the issue to be tried and submit a memo to the district judge setting forth:

- (a) a concise summary of the ultimate facts claimed by
 - (1) petitioner
 - (2) respondent
 - (3) other parties;
- (b) the facts established by the pleadings or by stipulations of the parties which may be incorporated by reference;
- (c) any jurisdictional questions;
- (d) issues of law, including evidentiary questions;
- (e) the probable length of the evidentiary hearing.

The magistrate judge may also require the parties to submit the names of witnesses whom they intend to produce, and to exhibit to one another, and submit a schedule of, exhibits which they expect to offer in evidence.

____ As to any issue concerning which the magistrate judge does not intend to recommend an evidentiary hearing, the magistrate judge shall submit a memo which shall:

- (a) identify the relevant portions of the record or transcript of prior proceedings;
- (b) summarize the relevant facts;
- (c) summarize the parties' contentions of law with appropriate citations;
- (d) state the recommendations as to the disposition of such contentions of law, and the grounds therefore.